

Fordham Environmental Law Review

Volume 11, Number 3

1999

Article 2

Resolving Public Health and Redevelopment Concerns in Brownsfields Legislation

Richard L. Brodsky*

*New York State Assembly

Copyright ©1999 by the authors. *Fordham Environmental Law Review* is produced by The Berkeley Electronic Press (bepress). <http://ir.lawnet.fordham.edu/elr>

FEATURED SPEAKER

RESOLVING PUBLIC HEALTH AND REDEVELOPMENT CONCERNS IN BROWNFIELDS LEGISLATION

*Assemblyman Richard L. Brodsky**

MS. DAMES: Good afternoon. My name is Jeanine Dames and I am the Managing Editor of the *Environmental Law Journal*.

I am honored today to introduce Assemblyman Richard Brodsky. Assemblyman Brodsky represents the 86th Assembly District, which includes a significant part of Westchester County. He was first elected to public office in 1975 and served on the Westchester County Board of Legislators for four terms. In 1982, he was elected to the New York Legislature and is currently serving his ninth term in the New York State Assembly.

Assemblyman Brodsky serves as Chairman of the New York State Assembly Committee on Environmental Conservation. He also serves as a member of the Majority Steering Committee, the Banks Committee, and the Tourism, Arts, and Sports Development Committee. Through his work with the New York Assembly, Assemblyman Brodsky has been an advocate for the environment, for education, and for economic development.

Please join me in welcoming Assemblyman Brodsky.

ASSEMBLYMAN BRODSKY: Thank you very much.

I am delighted to be back at Fordham and back working with the *Environmental Law Journal*. They may not remember it, but I have been here under their auspices before. I am pleased to be a part of this conference, even though I am only the featured speaker. I

* Chairman, New York State Assembly Committee on Environmental Conservation.

didn't know until earlier today that there were going to be these lawyer-like distinctions made regarding the titles of the speakers. John Cahill is a terrific speaker and a terrific guy and I think you will enjoy hearing from him very much. But he is going to lord it over me, I just know it, that he is keynote and I am featured.

Words do mean a great deal in this particular area. I was intrigued when I saw the title of this, *Earth, Wind and Fire*, a remarkably un-lawyer-like description of a very important public policy controversy which we are in the middle of.

I was struck by how important the vocabulary for what we are involved in has become. In essence, the struggle over what the brownfields program is, and what the brownfields statute should be is essentially matters of vision and value as much as they are of lawyer-like parsing of words.

The essential mission we--at least, speaking for my colleagues in the Assembly and myself--find ourselves on finding a way to take a group of places that are either environmentally unsound or economically and make them such. That oversimplification allows us to then move to the next level of understanding, which is more political, in that these places are largely in urban and low-income areas and in communities of color, which bring with it a resonance and a history, both for the environmental movement and the wider social justice movement, that has infused itself into our debates in a very important and productive way.

It seems to me that the essential task will be to find a way to bring some sort of sound economic activity without recreating both the legally and extralegally oppressive mechanisms which have burdened those communities for their entire history. That is not a simple or easy thing to begin to wrestle with.

From my point of view, it becomes even more complicated when those who do not share those values--not bad people, not evil people, but people with a different set of interests, including a good degree of self-interest--have to some extent appropriated the word "Brownfield."

As we looked at this within the Legislature over the last year, the first thing I kept asking was, "What do you mean by a Brownfield?" If you examine the range of legislative proposals before us, you will see that everybody describes a Brownfield in ways that coincide with their self-interest and what they want out

of the legislative process. So, for example, the Governor's bill¹ makes every single site in New York that needs clean-up, a Brownfield.

In the Assembly, we drafted a statute defining a brownfield. If there is anything for which we would look to the academic community for support it is helping us on these kinds of levels. A brownfield, by our definition, is a site, probably in an urban low-income community, or a community of color, that has been used for industrial/commercial purposes, which people in both the local and larger communities want to. This is, I think, perhaps the most important part where environmental concerns present some sort of bar to redevelopment that the marketplace cannot handle. That is a much more limited definition than most of the others you see, but I think it is the best one, and I think that it captures what it is that intuitively, folks who are not lawyers and academics, mean when they talk about brownfield redevelopment.

It also allows us to take the next step and develop an answer for an important question: how many brownfield sites do we have, where are they, and what is their condition of ownership and availability? Here again, the Assembly has passed important bills, although this has gone remarkably unnoticed and undiscussed in terms of the analysis of the legislative process until very recently. Where are they, who owns them, and what is their condition? Well, we provided some money to municipalities to begin that assessment process.

We have also suggested and passed a change in the law which would allow a municipality to enter a privately held brownfield site for the purpose of environmental testing without having to take title first. Part of the difficulty here is that municipal governments do not want to get involved and find out later that they have a disaster

1. See *Digging up the Details: A Comparison of Proposed New York State Superfund and Brownfields Legislation*, in Fordham Envtl. L.J. Symposium 2000 CLE Manual, *Earth, Wind and Fire: Brownfields in the Coming Millennium* § 2 (Mar. 22, 2000) [hereinafter NRDC Report]. This report, prepared by the Natural Resources Defense Council in March 2000, provides a detailed comparison of the three major brownfield legislative packages, namely, Governor Pataki's bill, the Brownfields Coalition bill, and the Assembly's bills. *Id.* at 1. The Report can be purchased by visiting NRDC's website, at <http://www.nrdc.org/publications/default.asp#legislation> (last visited Dec. 1, 2000).

on their hands. What they want to do is know what they are getting into before they take title, either *in rem* or otherwise.

We began to then look at the programmatic elements of how to help the private sector do to redevelop those sites. Again, I want to take a moment to go back and remind you of the values that we think ought to infuse this analysis. There ought to be a deep understanding that the communities in whose precincts these sites exist have a central role in deciding how to redevelop them.

One of the downsides of some of the Governor's policies over the last few years is something that *The New York Times* just wrote about last week in an interesting way. It is the "re-browning" of the banks of the Hudson River due to a series of policy decisions, be it power plant siting issues or others. One hundred years ago, the public was largely cut off from the Hudson River by a set of economic decisions, namely to put factories and utilities and wharves and piers on the banks of the river. Now communities are wrestling with how they can reopen access to the river. And yet, the very policies that I think everybody else is pushing will inevitably yield a "re-browning," over the objections of the communities who host those sites. Making sure that economic and environmental growth is accomplished within the context of the values of public health, public decision-making, apportionment of responsibility to both "responsible"--and not necessarily in the legal sense only--"parties" and everyone else, is what we have been attempting to enact.

We will have, within a matter of days, a proposal that will, among other things, provide \$75 million for a program of accelerated clean-up for sites that meet the definitional criteria I have already mentioned, that engage the host community in the decision-making process from the get-go, that enact these other articulated changes in law, that provide municipal access, and by allowing a municipality to privatize a site without having to repay to the State funds through the Environmental Quality Bond Act that have been provided for clean-up. If we decide to solve the problems upon which we can agree and not use this as an attempt to reinvent the entire history and future of environmental clean-up, we can get a lot done very quickly consistent with the values I have mentioned to you.

The thing we are not going to do is touch any of the liability questions. There are a host of reasons--some of which are

analytical and public policy-based, some which are purely political--that engendered that decision. Let me hint at some of the politics of it. A lot of the push to reinvent all clean-ups in New York under the guise of brownfields comes from the business community, who have a bill before both houses that they strongly support, and which includes a number of things very important to them. One of the things you learn when you get to a senior position and have to negotiate legislation is that at some point a trading process takes place. My first rule of Albany, for those of you who have not been there, is do not, ever, negotiate with yourself. It is always unproductive. Part of our interest in the liability questions, which we are deferring, has to do with some of that. I just wanted to parenthetically mention that.

The other major thing we are not going to do, and we are not going to do this as a matter of principle, is we are not going to make fundamental changes in the clean-up standards that affect all sites around the state. As you know, under current law, groundwater is to be treated as drinking water. For soil-based clean-ups, a guidance memorandum--whatever that means--has a set of values which are to be met or aspired to, and often are and often are not. We believe that the other proposals out there will have the inevitable and foreseeable effect of substantially increasing the amount of toxins left in the ground without that decision being related to the need to encourage economic activity, and we think they are intended to do just that.

We expect to have this proposal out and enacted in the Assembly within a reasonable amount of time. I really do not want to take much more of my time addressing this, but the history of how we got here is extraordinarily complicated.

In 1996, the Governor promised the environmental community a package to refinance the state Superfund. It never came. There was much moaning. Out of the re-endorsement process in the environmental community in 1998, the Governor created a Task Force which met and prepared in secret to consider a refinancing proposal, a proposal that partially refinanced--but then totally revamped the program--the argument on their side being we ought to have a unitary, one-program clean-up deal in this state; the second part of it being they substantially changed the financial flow.

For example, they took the oil spill program, which is now 100 percent paid for by the polluter and industry, and moved it to 50% taxpayer pays with a taxpayer subsidy of that program of about \$500 million. This is totally unacceptable to me and to my colleagues. And then you have the Brownfields Coalition proposal,² which I find equally, for different reasons, unacceptable. And then there are a series of other individual proposals brought by individual members, such as the Destito bill on Brownfield Redevelopment Zones.³

The Governor has sought enactment of his overarching proposal as part of the budget negotiations. That would be catastrophic because the negotiations would not take place in a measured and public way, and we have rejected that. For reasons having to do largely with business community opposition to some of the fees that the Governor has proposed, the Senate has similarly rejected it. The Governor is lying low. Ask John Cahill today what they are going to try to do, as to what the prospect is of negotiations of that in the short run.

In sum, this is where I think we are legislatively, and then I will take whatever questions you have within my time.

The Assembly remains for most things environmental, the repository of the values that have defined the environmental movement over time. Now, you would not know that if you listened to some of the environmental lobbyists you are about to hear, but it is true.

The fact of the matter is, when it comes to issues like environmental justice, citizens' suits, empowerment of communities, and on a wider host of issues, the progressive flame, as dimly as it may flicker in this nation and this state, is kept alive by the warm breath and keen intelligence of Shelly Silver and ninety-seven Democrats. That perspective infuses what we are going to do both intellectually and tactically with respect to brownfields.

2. See NRDC Report, *supra* note 1; Fordham Env'tl. L.J., Symposium 2000 CLE Manual § 7 (describing the Brownfield Coalition's legislative proposal).

3. See A. 496, 223 Leg., Reg. Sess. (N.Y. 1999), available at <http://www.assembly.state.ny.us/cgi-bin/showtext?billnum=A00496> (the "Destito bill") (last visited Dec. 1, 2000); A. 8722B, A. 874B & A. 8956 (the "Brodsky bills"); A. 2044 (the "Grannis bill").

We ain't gonna get rolled, we are gonna fight for those values, but we understand compromise and negotiation as well. So we are going to continue down that road, alone. I should not say that. Once our proposal is out, I suspect you will see that significant forces in the environmental community will be saying some very nice things about our package. I think that is the likely outcome; at least, we have worked hard to do that.

You will see the Governor's proposal there, you will see the Business Council's proposal here,⁴ you will see the Brownfields Coalition there, and us here, and then we are going to rock 'n roll for what I hope is a much longer time than the Governor wants so we can get some public involvement and understanding of what is at stake.

This is as big as it gets with respect to the public health future of this state. If we go to a use-based clean-up system, as the Governor has proposed, I suggest to you that you will see both land use decisions and public health decisions that I do not find acceptable, and I would hope that many or some or one of you would share that with me as a concern. We welcome and invite the help and analysis that you may be able to provide and look forward to a spirited debate--the more public, the better.

Although I have tried to couch my criticisms--well, I haven't couched them; I have made my comments about the other proposals as clearly as I can--I want to make it very clear that we welcome all these other ideas and participants. It is helpful. It is good. It gives us something to check ourselves against because, although I think we are very strong in the values we bring to this, we need other folks, outsiders, to make sure that we are not being unreasonable or not corresponding with them in ways we can.

With that, it is going to be fun, for those of you who enjoy spectator sports. For those of you who like politics as a sporting venue, we will be glad to help you get involved. From my perspective, as one of the four operative owners of one of the four operative systems here, we benefit. Our self-interest is in more public disclosure.

4. See The Business Council of New York State, Inc.'s website, at <http://www.bcnys.org/inside/gac/leghigh00.htm> (describing the Council's various legislative proposals) (last visited Dec. 1, 2000).

Thank you again to Fordham, to the Law School and to the *Environmental Law Journal*. If you have any questions, I'd be pleased to take them.

QUESTIONS & ANSWERS

QUESTION: I have a question. You said about \$75 million will be allocated?

MR. BRODSKY: That is correct. That is in the Assembly budget resolution and will also appear in subsequent enabling legislation.

QUESTIONER: Okay. Who gets control of the sites once they are cleaned up?

MR. BRODSKY: Right now, under the Bond Act, the sites need to be municipally owned, but one of the things we are going to do is change that so that community-based organizations are able to directly access the funds, and we are going to ensure that there are Technical Assistance Grants and other kinds of things so the community can participate in the planning and creation of the clean-up and use of the site, and we are going to make sure that if it is a municipal site, that it can be recycled into the private sector without penalty.

QUESTIONER: I don't quite see how you can go around the liability issue in opening sites if nobody wants to move on something.

MR. BRODSKY: Why are we not dealing with liability when liability, and if I mischaracterize your view let me know, liability seems to be the major obstacle to redevelopment of the sites redevelopment.

Well, first, I don't share the view that liability concerns are the major obstacle to sites. They are a substantial obstacle in many places. But one of the points I want to go back to is that I think we need to incrementally get into this brownfield thing by assuring that we don't undo sets of protections for people on the grounds that there may be a need for them if in fact we can clean up some, most, or all of them without those.

With respect to liability, we do not know exactly how many sites and which sites are affected by liability questions. The big liability questions in the end will come down to what are called third-party issues. I think it is not going to be a matter of enormous controversy to talk about the liability that may incur to the new

developer, I want to use a non-legal term here, who comes in and does something. But there will remain a substantial question about what liability will still exist to a third party who may later turn out to have been damaged by actions or activities on the site, either historically or as a result of the development. There, the business community wants to be held harmless. Their fallback position is the taxpayer should pick up those potential liabilities.

I am not a believer in socialism for the rich and capitalism for the poor. To the extent we have a discussion about that, the question of financial responsibilities will be wrapped up in all of them. We are well aware of the liability issues that need to be addressed. Once we get into a ripe negotiation, I suspect they will be raised and dealt with.

QUESTION: I have two questions. I am curious about your definition of brownfields. Why don't you include in your definition, for example, rural areas which may be impoverished, where there are communities that could be enhanced by development?

MR. BRODSKY: The question is, why don't we include rural areas that are poor and that would benefit from the economic development? The simple answer is because we believe brownfields have meant, and should mean, the recycling of largely industrial and commercial sites, not a greenfield that can be put to good environmental use. So if there are sites in rural areas that have a pollution problem which is a bar to redevelopment, and that pollution problem comes from previous commercial/industrial activity, widely defined, then they would be eligible under our bill. We are not limiting it to urban areas.

QUESTIONER: The second question I have is: do you think it is a good idea to harness the resources of the business community in brownfields efforts; and, if you do think that is a good idea, how would that occur?

MR. BRODSKY: I think it is. The place where I differ from my friends in the business community is here I believe in the market. They want the government to come in and subsidize these efforts. I have no objection to government subsidies. I think they are extraordinarily appropriate in a range of areas, but someone is going to have to show me that the subsidy sought and provided is necessary for the object sought.

With respect to brownfields, the notion that tax credits and aid will cause cleanups to happen just may not be true. You may have a heavily polluted site that is so valuable that its market use may provide the funds to clean up the site to pristine conditions or you may not.

But what the business community has done, in addition to being an effective and constructive partner is try to create this notion: "My God, we have the government's deep pockets, and the first thing we want to do is settle that we are going into that." What we want to do is focus whatever public funds are available at sites which cannot otherwise be cleaned up.

QUESTION: I would argue that right now you don't want to change the clean-up standards for groundwater or soil, but to go by a use- or a risk-based process. You will make it more economical and feasible for the clean-up, thereby promoting businesses to look at sites that they are backing off of right now.

MR. BRODSKY: How do you know?

QUESTIONER: I don't know for sure.

MR. BRODSKY: Neither do I.

QUESTIONER: It is a thought that I would have, just based on other states.

MR. BRODSKY: I am not about to change the groundwater and soil standards of this state because you and I have a suspicion about what might be going on out there. What we have to do is remove the legal obstacles to development, provide economic subsidy where we can in a pointed way, and then begin to determine what the universe of sites is.

The Business Council, particularly, in my opinion, and the Governor less obviously but clearly, are trying to undo TAGM #4046⁵ and the groundwater standards in ways that are going to affect the whole state. Even the Brownfields Coalition proposal says, "Okay, we will have new standards and they will be better, but I will not be able to tell you what they are for three years after you change the law."

5. The DEC's Technical and Administrative Guidance Memorandum #4046 (Jan. 24, 1994) ("TAGM #4046") provides technical guidance on the 'Determination of Soil Cleanup Objectives and Cleanup Levels' for New York's DEC officials. See <http://www.dec.state.ny.us/website/der/tagms/prtg4046.html> (last visited Dec. 1, 2000).

You remember Big Julie's dice in *Guys and Dolls*? When the game gets tough, they have no spots on them and Big Julie will tell you what numbers come up when you roll the dice? Not this boy.

QUESTIONER: Well, in a lot of cases it is not always technically feasible to clean up to those standards.

MR. BRODSKY: That's true.

QUESTIONER: But I will agree with you that the market will also determine if a site is valuable to a commercial developer, they will buy it and clean it up, if they are going to make enough money off of it.

MR. BRODSKY: I don't want to dismiss the notion that there are sites, especially in urban areas, where groundwater is going to be a terrible problem because of the background pollution problems that are not necessarily site-specific, nor do I want to ignore the technical feasibility questions you raised.

Interestingly enough, TAGM #4046 with respect to soil has been viewed as flexible enough to accommodate that, much to the chagrin of some of the more focused members of the environmental community. The Assembly proposal is an initial, rational, workable, funded, first step that does not put the public health of the state at risk on a theoretical basis.

QUESTIONER: The Brownfields Coalition proposal defines community-based organizations as organizations that are founded to promote development. What kind of organizations are you going to be targeting and providing assistance to?

MR. BRODSKY: I am not going to be targeting, I am going to be inviting. We want as broad a definition as we can to see who comes in the door. Who eventually gets funded? Good question. But I do not think the statute should start predetermining that some kind of groups, which may have started for one reason but have transmuted their reason for being into another, should be excluded. So just come in the door with a good idea. Let's see if we can get you some money.

QUESTION: Assemblyman, there are some people in the business community who might argue that the brownfields program has a lot of equity and value in and of itself intrinsically, and, because of the uncertainty that exists at the state level with regards to liability--what I mean by uncertainty is I mean that a developer, a third party or an existing owner, really does not know where they might end up in the liability costs. There are people who would not

care to develop anything without a law that addresses liability relief clearly. I point to the examples of neighboring states and their success in implementing this type of action.

Why is there so much resistance with you and the Legislature to this idea?

MR. BRODSKY: Well, if I indicated there was resistance to the idea, then I did not adequately explain myself. What I thought I said was there is resistance to handing you guys what you want at the front end of the negotiating process. You are a businessman. I think you understand that.

It is clear that there is a liability component to a successful brownfields program and that any working program will address that. I have some ideas, which are infinitely more limited than perhaps yours or others, but I am not the possessor of revealed truth in this matter, and we need to sit down and work that out.

But while the business community at the same time is trying to undo the Superfund program, and trying to shift the cost of clean-up dramatically away from industry and polluters with respect to the Oil Spill Fund, it has not been my experience that my agenda is advanced by indicating at the outset of this discussion, "My God, you're right, now what we can do about my stuff?" It just doesn't work that way.

So I can't wink any better than I just winked. You guys come to us with something that is consistent with our values and we will solve everybody's problem.

QUESTION: I hope that the Assembly and the Legislature can identify and focus on the question of risk-based clean-up criteria, the process by which those are developed, because it's a numbers game and how it is done is not entirely scientific. It is, I think, worse than real estate appraisal in terms of disinterested standards of criteria.

MR. BRODSKY: Worse than real estate appraisal? I have been insulted before, but that is the worst I think I have ever heard.

Let me share with you my view of risk-based assessment. Generally with respect to environmental matters, it is about as immoral as it gets. You cannot get more unethical. If you peel the layers back--as, to EPA's credit, they did on the particulate stuff--you end up having to set a monetary value on a human life. It just comes down to that if you do this with some degree of intellectual rigor.

I had the opportunity to testify before the House before some of these Neanderthals who are in control of the House committee structures, and we were having this dialogue about that, and I looked at them and I asked, "Would you consider doing a cost/benefit analysis on issues dealing with reproductive freedom and abortion?" They said, "No, it's an ethical and moral issue." I said, "Maybe I feel that way about how clean you want to keep a community that has been made filthy over the last 100 years."

I don't know, however, how to respond to that, because in fact all of us do cost/benefit analysis when we cross the street. It is a part of the human experience. How you codify it in a statute is a fascinating kind of problem.

So my answer is I am going to just hold my breath and turn purple about it until I figure out what to do, but I am not going to let them do what they want. I have no easy answer for this, except to say I like objective standards, and if we need exceptions to objective standards, how do I get to those objective standards? I will do the best I can. Again, I can't wink any better than that.

QUESTION: New York City has something on the order of 2,500 to 3,000 acres of brownfield sites. For some portion of them, yes, the market will take care of them, but for a lot of them, it will not. What will your bill do to accelerate the clean-up and reuse and redevelopment of those sites, many of which are concentrated in certain areas of the City? Insofar as your bill will not do that, what would you propose to deal with those?

MR. BRODSKY: How do you define brownfields?

QUESTIONER: Well, I think that you defined them.

MR. BRODSKY: Do you share that definition?

QUESTIONER: An urban area, an area formerly industrialized, where there are surface soil contamination problems.

MR. BRODSKY: And where those contamination problems are an economic bar to the market redevelopment of the site. And you say there are 2,500 to 3,500 acres of that?

QUESTIONER: Two thousand five-hundred to 3,000.

MR. BRODSKY: How do you know?

QUESTIONER: That is the City's inventory.

MR. BRODSKY: Whew, now there's relief! We need some better public discussion of how we determine how many sites there are. Suppose there aren't 2,500; suppose there are 7,500? Suppose there aren't 2,500; suppose there are 50? My point is that I am not

about to restructure the values and statutory mechanisms based upon that essentially conjectural analysis, especially when I don't know how it was conducted.

But your question is a very, very fair one. My first answer to you is, one, I want to deal with the sites I can deal with now. I want to start with that, because disagreement over 60% of the sites should not be a bar to action on 40% of them. I want to start the process of actually making the objective conditions known as to what the other 60% may be and what their real problems are.

The Assembly has been trying to do an inventory for years. Let people test those sites, see what the problems are. If then we find that there are real obstacles in the clean-up standards or something else, and yet we can find ways to get around those and change them so that redevelopment can take place and public health isn't a concern, I will be a partner in that. But I am not going to rush into it on essentially speculative public policy analyses of what may be out there and what may be stopping redevelopment.

The gentleman here says it's liability. It may be the cost of clean-up. We have a completely untested set of data and yet sweeping proposals to change the public health standards of the state. And I am your last, best hope for stopping that.

QUESTION: Your assessment of the hundreds of thousands of hours of work that went into the Brownfields Coalition proposal is that it was all speculative public policy?

MR. BRODSKY: Well, seriously, if I could get you to say it a little nicer, I would have said yes, that is my conclusion. But that does not mean that the proposal itself does not have many things of value in it. The exercise itself has been very important, and we have learned and changed our views from what we have heard both in the proposal and from the proponents. But if you are asking me whether that proposal is appropriately supported so I could recommend it as the policy of the state, I would unequivocally say no--and have, indeed, to my friends there.

QUESTIONER: But your earlier statement was this was all speculative public policy analysis. My question is: do you view the work of the Brownfields Coalition, as just public policy speculation?

MR. BRODSKY: To the extent that my stuff is public policy speculation, I didn't mean it as this incredible pejorative. Look, I am not going to back off a whit about our disagreements, and I

want them understood by this audience. But I also want this audience to understand that the process by which people have spent those hundreds of thousands of hours has been important public service, and sometimes people engage in that and come up with a product that I do not agree with.

So I am not mad at them. I do not think they are bad people or did a bad thing. I just cannot buy the product. And I have talked to Mathy privately and I have met with groups privately, and I went downtown to one of those office buildings. I have met with them three or four times. I do not lack any understanding of the proposal, nor appreciation of the efforts. I am just not going to do it. That is my job.

QUESTION: Do you really think CBOs are a good depository for these assets?

MR. BRODSKY: Yes in some cases and no in other cases. But do I think they should as a class be eliminated from participation? No.

QUESTIONER: Handcuffed?

MR. BRODSKY: Apparently you and I have a different version of what the universe of CBOs is. There are good ones. It is sort of like lawyers--you know, some good ones, some bad ones.

With that, let me hope that I have at least outlined the controversy, which was really what I wanted to do; given you a sense of my views, which I suspect from some of the questions; and let me urge you in conclusion--and let me take thirty seconds to say this.

Look, no one in my shop has a closed mind. We are not engaged in a process of demonizing those we disagree with, even though the disagreements are profound. I will meet with anybody. And I am not telling you that it has to be done my way. I am not saying that.

But I am also in the middle of a political fist fight, which was precipitated by the Superfund Working Group and which has at stake, not just the brownfields issue, but the entire relatively successful Superfund program, oil spill clean-up, and the largely unsuccessful voluntary clean-up program.

I am balancing a need for intellectual openness and candor with the realities of a political system in which money drives results. The folks I am up against are largely big money folks. They have every right. It is legal. They are not breaking the laws. But I know the nature of the fight, and the communities that have suffered from

these conditions and sites in years past are going to require a great deal of representation up there, and one of the things we hope to do is give them that as we listen to everybody, including you, as I hope I get the results of this seminar back in varying forms.

Thank you very much for this opportunity.